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T.R.A. DOCKET ROOM  
March 17, 2005

Joelle J Phillips  
Attorney

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Notice of Election by KMC Data LLC of the Interconnection Agreement  
between BellSouth and Level 3 Communications, LLC*  
Docket No. 05-00067

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Petition for Leave to Intervene*. Copies of the enclosed are being provided to counsel for KMC.

Cordially,

A handwritten signature in black ink, appearing to read "Joelle Phillips", written over the typed name.

Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

In Re: *Notice of Election by KMC Data LLC of the Interconnection Agreement between BellSouth and Level 3 Communications, LLC*

Docket No. 05-00067

PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.  
FOR LEAVE TO INTERVENE

BellSouth Telecommunications, Inc., pursuant to T.C.A. §4-5-310 and T.C.A. §65-2-107, petitions the Tennessee Regulatory Authority (the "Authority") for leave to intervene in the above-captioned proceeding, and in support thereof states as follows:

1. BellSouth, a Georgia Corporation authorized to conduct and conducting a public utility business in the state of Tennessee, is engaged in furnishing telecommunications service in the state of Tennessee.

2. BellSouth competes or will compete against KMC Data LLC ("KMC Data"). BellSouth has a direct interest in KMC Data's request to adopt the May 24, 2004 interconnection agreement between BellSouth and Level 3 Communications, LLC ("Level 3") for the State of Tennessee.

3. BellSouth opposes KMC Data's request to adopt the Level 3 agreement. KMC Data is improperly seeking to adopt an agreement in a thinly veiled attempt to continue to purchase UNEs that the FCC has determined in its Triennial Review Remand Order are no longer available.

4. The FCC rules implementing Section 252(i) of the Federal Act require that a CLEC may only adopt another CLEC's interconnection agreement within a reasonable period of time after such agreements are approved by the applicable state commission. *See* 47 C.F.R. § 51.809(c). KMC Data's request to adopt was made on February 2, 2005, well **after** the FCC released its press release on December 15, 2004, summarizing the TRRO. Moreover, subsequent to the execution of the Level 3 agreement, there have been other substantial changes in law, including but not limited to the D.C. Circuit Court of Appeals vacatur of certain portions of the FCC's Triennial Review Order, and the FCC's Interim Rules Order regarding interim unbundling rules. In addition, the FCC's Triennial Review Remand Order became effective on March 11, 2005, further changing the terms upon which requesting carriers may order unbundled network elements. Given the significant changes that have occurred rendering the Level 3 Interconnection Agreement noncompliant with existing law, KMC Data's request to adopt this agreement has not been made within a reasonable period of time as required by the FCC's rules and is not adoptable in accordance with the FCC's rules and orders.

5. KMC Data also states its desire to **amend** the same agreement it seeks to adopt. (*See Notice of Election* at page 2.)

6. FCC Rules also require CLECs to adopt another carrier's agreement in its entirety. *See* 47 C.F.R. §51.809.

7. KMC Data also improperly requested to adopt the Level 3 agreement during the time period when the FCC's Interim Rules Order applied. Specifically, paragraph 22 of the Interim Rules Order stated:

We also hold that competitive LECs may not opt into the contract provisions 'frozen' in place by this interim approach. The fundamental thrust of the interim relief provided here is to maintain the *status quo* in certain respects without expanding unbundling beyond that which was in place on June 15, 2004. This aim would not be served by a requirement permitting new carriers to enter during the interim period.

The intent of the Interim Rules Order was to freeze in place the carriers' provisions as of June 15, 2004, and not to permit a new carrier to obtain vacated elements to which they were not entitled as of June 15, 2004.

8. Because the FCC *prohibited* the adoption of any agreement that contained "frozen elements" in the Interim Rules Order, even if KMC Data wanted to adopt the Level 3 agreement in its entirety, KMC Data LLC's request for such adoption, made during the period that the *Interim Rules Order* was in effect, would be prohibited. Now that the FCC has issued its final unbundling rules in the *TRRO*, it is clear that KMC Data LLC – a new CLEC in Tennessee – is not entitled to many of the UNEs that were available at the time the Level 3 agreement was executed.

9. The FCC has expressly prohibited what KMC Data is trying to do here – (1) adopt an interconnection agreement outside of the reasonable time period required by FCC Rules, (2) seek certain amendments to the agreement rather than adopt the agreement in its entirety, (3) ignore the requirements of the *Interim Rules Order*, and (4) ignore the *TRRO* and take unfair advantage of the fact that the Level 3 agreement contains UNEs that are no longer required.

10. BellSouth's legal interests may be determined in the proceedings and BellSouth's interests will not be adequately represented unless the Authority allows BellSouth to intervene.

11. Allowing BellSouth to intervene will not impair the interests of justice or the orderly and prompt conduct of these proceedings.

12. BellSouth respectfully requests that it be granted leave to intervene and participate as a party in the above-captioned proceeding.

WHEREFORE, BellSouth prays:

1. That it be permitted to intervene in this proceeding and participate as a party.
2. That the Authority convene a contested case and appoint a hearing officer to set a procedural schedule.
3. That BellSouth have such other and further relief to which it may be entitled.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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## CERTIFICATE OF SERVICE

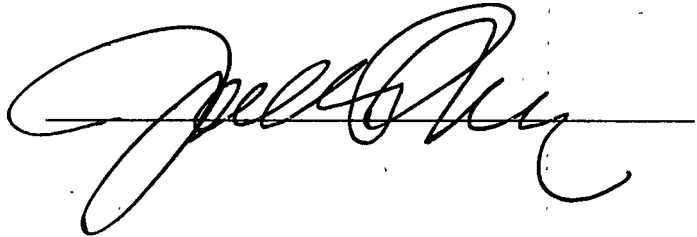
I hereby certify that on March 17, 2005, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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- ☐ Overnight
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Andrea P. Edmonds  
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A large, stylized handwritten signature in black ink, likely belonging to a representative of Kelley Drye & Warren, is written over a horizontal line.